U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ENFORCEMENT AND REMOVAL OPERATIONS
ICE HEALTH SERVICE CORPS

REFUSAL OF TREATMENT

IHSC Directive: 02-08
ERO Directive Number: 11727.3
Federal Enterprise Architecture Number: 306-112-002b
Effective: 25 Mar 2016

By Order of the Acting Assistant Director
Stewart D. Smith, DHSc/s/

---

1. **PURPOSE:** The purpose of this issuance is to set forth the policies and procedures to identify and manage a detainee's refusal of treatment while in U.S. Immigration and Customs Enforcement (ICE) custody.

2. **APPLICABILITY:** This directive applies to all ICE Health Service Corps (IHSC) personnel, including but not limited to, Public Health Service (PHS) officers, civil service employees and contract personnel. It is applicable to IHSC personnel supporting health care operations in both ICE-owned and contracted detention facilities, and to IHSC Headquarters (HQ) staff. This directive applies to contract personnel when supporting IHSC in detention facilities and at HQ. Federal contractors are responsible for the management and discipline of its employees supporting IHSC.

3. **AUTHORITIES AND REFERENCES:**

   3-1. Title 8, Code of Federal Regulations, Section 235.3 (8 CFR § 235.3), Inadmissible Aliens and Expedited Removal.

   3-2 Section 232 of the Immigration and Nationality Act, as amended, Title 8, U.S. Code, Section 1222 (8 U.S.C. § 1222), Detention of Aliens for Physical and Mental Examination.

   3-3. Title 8, Code of Federal Regulations, Part 232 (8 CFR 232), Detention of Aliens for Physical and Mental Examination.

   3-4. Section 322 of the Public Health Service Act, as amended, Title 42 U.S. Code, Section 249(a) (42 U.S.C. § 249(a)), Medical Care and Treatment of Quarantined and Detained Persons.

3-5. Title 42, U.S. Code, Section 252 (42 U.S.C. § 252), Medical Examination of Aliens.

4. **POLICY:** Detainees have the right to refuse medical treatment at any time while in ICE custody.

4-1. **Properly Informing a Detainee Who Refuses Care.** The IHSC health care provider must provide the detainee with sufficient information to make an informed decision to accept or refuse the proposed treatment, as well as a reasonable explanation of viable alternatives. The information must be provided in a language that the detainee understands. Staff must utilize interpreter services, as necessary, and document the language the information was translated into, as well as the identification (ID) number of the translator service/person that was used for translation.

a. A nurse, medical provider, behavioral health provider (BHP) or dentist, as appropriate, must educate the detainee based on the treatment being refused.

b. If a nurse provides the education, the nurse should refer the refusal documentation to a medical provider, BHP or dentist, as appropriate, for review. The detainee should be scheduled for a face-to-face visit with the medical provider, BHP or dentist to review the treatment plan and receive follow-up education.

4-2. **IHSC Refusal Form.** The nurse, medical provider, BHP or dentist must ensure the IHSC Refusal Form (IHSC Form 820) is completed in its entirety each time the detainee refuses treatment. If the form is not available in a language the detainee can understand, the health care provider should ensure an interpreter service translates the content of the form for the detainee.

a. The IHSC Refusal Form (IHSC Form 820) requires three signatures: the detainee, the health care provider obtaining the refusal, and a health or custody staff witness.

b. The IHSC staff member completing the IHSC Refusal Form (IHSC Form 820) must obtain and document the following information from the detainee:

(1) What, specifically, the detainee is refusing (the nature of the service beign refused);

(2) Why the detainee is refusing. When possible, allow the detainee to write the reason in his/her own words or quote him/her;

(3) Confirmation that the detainee was informed of possible adverse consequences to health that may occur as a result of treatment refusal;

(4) Any other relevant information; and

(5) Signature of the detainee or witnesses when the detainee refuses to sign the refusal .

c. The IHSC staff member completing the IHSC Refusal Form (**IHSC Form 820**) must also document the following:

(1) Date and time the refusal occurred;

(2) Name, title and signature of the health care provider obtaining the refusal; and

(3) Signature of a health or custody staff witness to the refusal.

4-3. Detainee Refusal to Sign Refusal Form. If the detainee is educated as outlined above, and still refuses treatment *and* refuses to sign the IHSC Refusal Form (IHSC Form 820), the health care provider who educated the detainee must document the detainee's refusal to sign the refusal form by making an annotation on the IHSC Refusal Form (IHSC Form 820) on the detainee's signature line.

4-4. No Waiver of Future Treatment. The detainee should be advised that the current refusal of care does not waive his or her right to subsequent treatment.

4-5. Medically-Ordered Segregation. If a detainee refuses treatment or examination, it may be determined that it is medically necessary to segregate the detainee. IHSC staff should notify Enforcement and Removal Operations (ERO) within 72 hours of the placement of any detainee in administrative segregation on the basis of a disability, medical or mental illness, suicide risk, hunger strike, status as a sexual assault victim, or other special vulnerability; or, regardless of the reason for the placement, when a detainee placed in segregation has a mental illness, serious medical illness, or serious physical disability.

a. Special Medical Housing Unit. The detainee may be placed in the Special Management Unit (SMU) or the Medical Housing Unit (MHU). Segregation is only for medical reasons and must be documented as such in the health record.

b. Mental Health Assessment. BHPs must assess detainees that are segregated for refusing medical treatment. If it is determined that the segregation will adversely affect the detainee's mental health status, the detainee must not be placed in segregation. The on-site medical authority or designee should recommend an alternative housing assignment.

4-6. Involuntary Treatment. The right to refuse treatment may be overridden by a court order. When a court order for involuntary treatment is considered necessary, the Clinical Director (CD), or designee, must provide justification for the involuntary treatment order and document all findings in the detainee's health record.

a. The CD or designee must discuss the rationale to pursue involuntary treatment with the IHSC Deputy Assistant Director of Clinical Services/Medical Director or designee.

b. If a detainee refuses treatment and the medical authority determines that the treatment is necessary, ICE/ERO shall be consulted in determining whether involuntary treatment shall be pursued.

c. If a detainee refuses medical treatment, and a licensed health care provider determines that a medical emergency exists, the licensed health care provider must notify a physician (if they are not a physician), who may authorize involuntary medical treatment. Exceptions: *See* IHSC Directive: 02-01, *Advance Directives, Do Not Resuscitate and Terminal Illness*.

4-7. Monitoring Treatment Refusal Trends. On a quarterly basis, the CD and or the health services administrator (HSA) should randomly review and document refusals of treatment to assess for possible trends leading to refusals of care. The CD and or HSA should ensure that such refusals are not the result of miscommunication or misunderstanding on the part of the detainee.

5. PROCEDURES: No additional procedures.

6. HISTORICAL NOTES: This directive replaces IHSC Directive: 02-08, *Refusal of Treatment,* dated 15 Nov 2015. It adds the need for a second health care or custody staff member as a witness who signs the refusal; changes to sections 4-2, 4-6 and 4-7. It also adds definitions.

7. DEFINITIONS:

Behavioral Health Providers – Behavioral health providers are psychiatrists, clinical psychologists, independently licensed social workers, psychiatric nurse

practitioners or any other behavioral health professional who, by virtue of their license, education, credentials, and experience, are permitted by law to evaluate and care for the mental health needs of patients.

Clinical Pharmacist – Clinical pharmacists provide pharmaceutical care to patients by optimizing medication therapy and providing disease state management education. Clinical pharmacists may provide direct patient care under the auspices of a collaborative practice agreement with an on-site or remotely located physician. Clinical pharmacists have achieved either a doctoral degree in pharmacy or a bachelor's degree in pharmacy with either an additional certification in medication therapy management (MTM) or national board certification (BCPS, BCACP, etc.). (IHSC Operational Definition)

Custody Staff or Officers – Custody staff are all security staff members who serve in a custody role (could be ICE, other federal or state, or contracted officers at Service Processing Centers, Contract Detention Facilities, or Intergovernmental Service Agreement facilities). (IHSC Operational Definition)

Health Care Personnel or Providers – Health care personnel or providers are credentialed individuals employed, detailed, or authorized by IHSC to deliver health care services to detainees. It includes federal and contract staff assigned or detailed (i.e. temporary duty) who provide professional or paraprofessional health care services as part of their IHSC duties. (IHSC Operational Definition)

Licensed Independent Practitioners (LIPs) – Any practitioner permitted by law and the organization to provide care and services, without direction or supervision, within the scope of the practitioner license and consistent with individually assigned clinical responsibilities (TJC, 2005). Within IHSC, LIPs are: physicians, psychologists, licensed clinical social workers, and dentists.

Medical Providers – Medical providers include physicians, physician assistants, nurse practitioners, and clinical pharmacists. (IHSC Operational Definition)

Mid-Level Providers – Mid-level providers are nurse practitioners (NPs) and physician assistants (PAs). (IHSC Operational Definition)

Nursing Staff – Nursing staff, within IHSC, are registered nurses (RNs), licensed practical nurses (LPNs), and licensed vocational nurses (LVNs). (IHSC Operational Definition)

8. APPLICABLE STANDARDS:

8-1. Performance-Based National Detention Standards (PBNDS)

PBNDS 2011: 4.3, V., X. *Informed Consent and Involuntary Treatment,* 6-12.

8-2. American Correctional Association (ACA):

Performance-Based Standards for Adult Local Detention Facilities, 4th edition:

4-ALDF-4D-15: *Informed Consent.*

Standards for Adult Correctional Institutions, 4th edition:

4-4397: *Informed Consent.*

Performance-Based Standards for Correctional Health Care in Adult Correctional Institutions, 1st edition:

1-HC-3A-04: *Informed Consent.*

8-3. National Commission on Correctional Health Care (NCCHC):

Standards for Health Services in Jails, 2014:

J-1-05: Informed Consent and Right to Refuse.

9. RECORDKEEPING. IHSC maintains detainee health records as provided in accordance with the Privacy Act and as provided in the Alien Health Records System of Records Notice, 80 Federal Register 239 (January 5, 2015). The records in the electronic health records (eHR) system/eClinicalWorks (eCW) are destroyed ten (10) years from the date the detainee leaves ICE custody. Retention periods for records of minors may differ. Paper records are scanned into the eHR and are destroyed after upload is complete.

10. NO PRIVATE RIGHT STATEMENT. This directive is an internal policy statement of IHSC. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.